



**[6450-01-P]**

**DEPARTMENT OF ENERGY**

**10 CFR Part 431**

**[Docket No. EERE-2013-BT-STD-0030]**

**RIN: 1904-AD01**

**Energy Conservation Program for Certain Commercial and Industrial Equipment:  
Proposed Determination of Natural Draft Commercial Packaged Boilers as Covered  
Equipment**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed determination of coverage.

**SUMMARY:** The U.S. Department of Energy (DOE) proposes to determine that natural draft commercial packaged boilers meet the criteria for covered equipment under Part A-1 of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE proposes that classifying equipment of such type as covered equipment is necessary to carry out the purpose of Part A-1 of EPCA, which is to improve the efficiency of certain industrial equipment to conserve the energy resources of the Nation.

**DATES:** DOE will accept written comments, data, and information on this notice, but no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested persons are encouraged to submit comments electronically.

However, interested persons may submit comments, identified by docket number EERE-2013-BT-STD-0030 or Regulation Identifier Number (RIN) 1904-AD01, by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- E-mail: [PkgdBoilers2013STD0030@ee.doe.gov](mailto:PkgdBoilers2013STD0030@ee.doe.gov) Include EERE-2013-BT-STD-0030 and/or RIN 1904-AD01 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, portable document format (PDF), or American Standard Code for Information Interchange (ASCII) file format, and avoid the use of special characters or any form of encryption.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE-2J, 1000 Independence Avenue SW, Washington, D.C. 20585-0121.  
Telephone: (202) 586-2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6<sup>th</sup> Floor, 950 L'Enfant Plaza SW, Washington, D.C. 20024.  
Telephone: (202) 586-2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number

or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VI of this document (Public Participation).

Docket: The docket is available for review at [www.regulations.gov](http://www.regulations.gov), including Federal Register notices, comments, and other supporting documents/materials (search EERE-2013-BT-STD-0030). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at:  
[http://www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/74](http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/74). This web page contains a link to the docket for this notice on the [www.regulations.gov](http://www.regulations.gov) site. The [www.regulations.gov](http://www.regulations.gov) web page contains instructions on how to access all documents, including public comments, in the docket. See section VI for further information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-8654. Email: [commercial\\_packaged\\_boilers@ee.doe.gov](mailto:commercial_packaged_boilers@ee.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue SW, Washington, D.C. 20585. Telephone: (202) 586-9507. Email: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, Mailstop EE-2J, 1000 Independence Avenue, SW, Washington, DC 20585-0121. Telephone: (202) 586-2945. Email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

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## **I. Statutory Authority**

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency for consumer products and certain commercial equipment. Part C of Title III of EPCA (42 U.S.C. 6311–6317), which was re-designated for editorial reasons as Part A–1 upon codification in the U.S. Code, establishes the “Energy Conservation Program for Certain Industrial Equipment,” which covers certain commercial and industrial equipment (hereafter referred to as “covered equipment”).

EPCA identifies 11 types of covered equipment and sets forth a twelfth provision for any other type of equipment which the Secretary of Energy (Secretary) classifies as covered equipment. (42 U.S.C. 6311(1)(A)-(L)) EPCA also provides for the types of equipment that can be classified as covered “industrial equipment” in addition to the equipment enumerated under 42 U.S.C. 6311(1), which includes packaged boilers as covered industrial equipment. (42 U.S.C. 6311(2)(B)) Further, pursuant to EPCA, industrial equipment must also, without regard to whether such equipment is in fact distributed in commerce for industrial or commercial use, be of a type:

- (1) which in operation consumes, or is designed to consume, energy;
- (2) which to any significant extent, is distributed in commerce for industrial or commercial use; and

(3) which is not a “covered product” as defined in 42 U.S.C. 6291(2) of EPCA, other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c).

(42 U.S.C. 6311(2)(A))

To classify equipment as covered commercial or industrial equipment, the Secretary must determine that classifying the equipment as covered equipment is necessary for the purposes of Part A–1 of EPCA. In general, the purpose of Part A–1 is to improve the efficiency of certain industrial equipment, such as packaged boilers, and to conserve the energy resources of the Nation. (42 U.S.C. 6312 (a), (b))

## **II. Current Rulemaking Process**

DOE has previously conducted energy conservation standards rulemakings for natural draft commercial packaged boilers. As explained in section IV.C, DOE is undertaking this coverage determination to explicitly clarify its statutory authority under EPCA to cover natural draft commercial packaged boilers. Following public comment, DOE intends to issue a final determination of coverage for this equipment, and would consider amended energy conservation standards and test procedures for this equipment as part of its upcoming rulemaking for commercial packaged boilers.

With respect to test procedures, DOE’s existing test procedures for commercial packaged boilers contain provisions for measuring the energy efficiency of natural draft commercial packaged boilers. As with any of DOE’s test procedures, the current test procedure allows for measurement of the energy efficiency, energy use, or estimated annual operating cost of natural

draft commercial packaged boilers during a representative average use cycle or period of use in a manner that is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) Although DOE's existing test procedure has generally proven adequate for testing natural draft commercial packaged boilers, DOE may consider any necessary amendments to these test procedures in the context of its upcoming "7-year-lookback" test procedure rulemaking. (42 U.S.C. 6314(a)(1)) In a typical test procedure rulemaking, DOE initially prepares a test procedure notice of proposed rulemaking (NOPR) and allows interested parties to present oral and written data, views, and arguments with respect to such procedures. In amending test procedures, DOE takes into account relevant information, including technological developments relating to energy use or energy efficiency of natural draft commercial packaged boilers.

With respect to energy conservation standards, DOE typically prepares initially an energy conservation standards rulemaking Framework Document (the Framework Document). The Framework Document explains the issues, analyses, and process that it is considering for the development of energy conservation standards. After DOE receives comments on the Framework Document, DOE typically prepares an energy conservation standards rulemaking preliminary analysis and technical support document (TSD) for the preliminary analysis. The preliminary analysis typically provides initial draft analyses of potential energy conservation standards on consumers, manufacturers, and the Nation. These steps are not legally required.

DOE is required to publish a NOPR setting forth DOE's proposed energy conservation standards and a summary of the results of DOE's supporting technical analysis. The details of DOE's analysis are provided in a TSD that describes the details of DOE's analysis of both the

burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). DOE affords interested persons an opportunity during a period of not less than 60 days after the publication of the NOPR to provide oral and written comment. (42 U.S.C. 6295(p)(2)) After receiving and considering the comments on the NOPR and not less than 90 days after the publication of the NOPR, DOE would issue the final rule prescribing any amended energy conservation standards for natural draft commercial packaged boilers. (42 U.S.C. 6295(p)(3))

### **III. Definition(s)**

DOE is considering a definition for “Natural Draft Commercial Packaged Boiler” to clarify coverage of any potential test procedure or energy conservation standard amendments that may arise subsequent to today’s proposed determination. There is currently no statutory definition of “natural draft commercial packaged boiler,” so DOE is considering the following definition of “natural draft commercial packaged boiler” to provide clarity for interested parties as it continues its analyses:

*Natural draft commercial packaged boiler* means a commercial packaged boiler designed to operate with negative pressure in the firebox and in the flue connection created by a chimney or the height of the unit itself, up to the draft control device. Such boilers do not require mechanical drafting equipment to vent combustion gases, but may include mechanical devices such as mechanical flue or stack dampers to limit the heat losses through the flue vent during off-cycle.



DOE seeks comments from interested parties about this definition for “natural draft commercial packaged boiler.”

#### **IV. Evaluation of Natural Draft Commercial Packaged Boilers as a Covered Equipment**

The following sections describe DOE’s evaluation of whether natural draft commercial packaged boilers fulfill the criteria for being added as covered equipment pursuant to 42 U.S.C. 6311(2) and 42 U.S.C. 6312.

Packaged boilers are listed as a type of industrial equipment at 42 U.S.C. 6311(2)(B). The following discussion addresses DOE’s consideration of the three requirements of 42 U.S.C. 6311(2)(A) and 42 U.S.C. 6312.

##### **A. Energy Consumption in Operation**

Based on the Energy Information Administration’s (EIA) 2013 Annual Energy Outlook (AEO) and 2003 Commercial Building Energy Consumption Survey (CBECS) data, DOE estimated that the annual energy use of gas and oil-fired commercial packaged boilers was 0.73 quad in 2012.<sup>1,2,3</sup> Based on the number of natural draft commercial packaged boiler models in the 2013 Air-Conditioning, Heating, and Refrigeration Institute (AHRI) certification directory (41 percent average for both gas and oil-fired commercial packaged boilers), DOE estimated that

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<sup>1</sup> Energy Information Administration (EIA), 2013 Annual Energy Outlook (AEO) Full Version (Available at: <http://www.eia.gov/forecasts/aeo/>) (Last accessed April 15, 2013).

<sup>2</sup> Energy Information Administration (EIA), 2003 Commercial Building Energy Consumption Survey (CBECS) (Available at: <http://www.eia.gov/consumption/commercial/>) (Last accessed April 10, 2013).

<sup>3</sup> AEO 2013 provides total space heating energy use for commercial buildings. In 2012, AEO 2013 estimates that 1.51 quads is used for gas space heating and 0.115 quad is used for oil space heating in the U.S. commercial buildings. To determine the fraction of space heating in commercial buildings provided by commercial gas and oil-fired packaged boilers, DOE used CBECS estimates, which show that 43 percent of gas heating is provided by gas boilers and 74 percent of oil heating is provided by oil-fired boilers.

the annual energy use of natural draft gas and oil-fired commercial packaged boilers was 0.30 quad in 2012, or the equivalent of approximately 51.7 million barrels of oil. Based on CBECS 2003 data, DOE estimated that, on average, existing gas and oil-fired commercial packaged boilers consume about 1,362 MMBtu/yr or about 400,000 kWh/yr per building that use natural draft gas and oil-fired commercial packaged boilers.<sup>4,5</sup>

## B. Distribution in Commerce

Natural draft commercial packaged boilers are distributed both in the commercial and industrial sectors. During the analysis leading to the 2009 commercial packaged boilers final rule (74 FR 36312 (July 22, 2009)), DOE obtained from AHRI an estimate of annual shipments of commercial packaged boilers that, at the time, were approximately 36,000 units. (2009 Technical Support Document, Chapter 6, Shipment Analysis<sup>6</sup>) Since no recent shipments data are available, DOE plans to assume that the same number of units will be shipped in 2013 (about 36,000 gas and oil-fired commercial packaged boilers). Since 41 percent of commercial packaged boilers models in the 2013 AHRI Directory<sup>7</sup> are natural draft commercial packaged boilers, DOE estimates that about 15,000 natural draft commercial packaged boilers will be shipped domestically in 2013.

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<sup>4</sup> Average energy use of gas and oil boilers per building in CBECS 2003 is equal to 1,555 MMBtu/yr. DOE adjusted this value to reflect a 6.9-percent improvement in existing buildings compared to 2003 buildings based on AEO 2013 data (Available at: <http://www.eia.gov/forecasts/aeo/assumptions/pdf/commercial.pdf>). DOE also adjusted the energy use data to normal weather conditions using the 10-year average heating degree-days (HDD) (2003-2012) compared to 2003 HDDs based on National Oceanic and Atmospheric Administration (NOAA) data (Available at: <http://www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp>), which resulted in a 5.1-percent decrease in heating energy consumption.

<sup>5</sup> Conversion: 1 kWh=3412 Btu.

<sup>6</sup> See <http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0013-0011>.

<sup>7</sup> Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Commercial Packaged Boiler Certification Directory (April 2013) (Available at: <http://www.ahridirectory.org/>) (Last accessed April 15, 2013).

### C. Prior Inclusion as a Covered Product

Natural draft commercial packaged boilers are not currently included as covered products under Title 10 of the Code of Federal Regulations, part 430 (10 CFR part 430). However, as explained below, under DOE's interpretation of the relevant statutory provisions, natural draft commercial packaged boilers are currently included as covered equipment under subpart E of 10 CFR part 431.

### D. Coverage Necessary to Carry Out Purposes of Part A–1 of the Energy Policy and Conservation Act

The purpose of part A–1 of EPCA is to improve the energy efficiency of certain industrial equipment to conserve the energy resources of the Nation. Commercial packaged boilers are covered equipment under the statute. Until now, DOE has not drawn a distinction between a commercial packaged boiler that is manufactured and shipped as a natural draft model or a mechanical draft model. Consistent with this position, DOE adopted energy conservation standards for natural draft commercial packaged boilers in a final rule published in the Federal Register on July 22, 2009, which was consistent with the efficiency levels contained in the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90.1–2007. 74 FR 36312.

DOE continues to conclude that, from a technical perspective, natural draft commercial packaged boilers are similar in purpose and function to their mechanical-draft counterparts. Nevertheless, DOE is initiating this coverage determination for natural draft commercial packaged boilers, because explicit coverage of natural draft commercial packaged boilers is

necessary to carry out the purposes of part A–1 of EPCA. Coverage will promote the conservation of energy and provide a more level playing field to the variety of commercial packaged boilers on the market, thereby discouraging potential substitution effects. Beyond the energy conservation standards currently in place for natural draft commercial packaged boilers, DOE will commence a rulemaking to consider amending the energy conservation standards both for commercial packaged boilers with mechanical draft equipment and, pending the outcome of today’s proposed coverage determination, natural draft commercial packaged boilers. Amended energy conservation standards that may result after such final coverage determination would help to capture some portion of the potential for improving efficiency of natural draft commercial packaged boilers.

In view of all the information in section IV of this notice, DOE proposes to determine that natural draft commercial packaged boilers qualify as covered equipment under part A–1 of Title III of EPCA, as amended. (42 U.S.C. 6311 *et seq.*)

## **V. Procedural Issues and Regulatory Review**

DOE has reviewed its proposed determination of natural draft commercial packaged boilers under the following Executive Orders and Acts.

### **A. Review Under Executive Order 12866**

The Office of Management and Budget has determined that coverage determination rulemakings do not constitute “significant regulatory actions” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this

proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

**B. Review Under the Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (Feb. 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel’s website at <http://energy.gov/gc/office-general-counsel>.

DOE reviewed today’s proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE certifies that the proposed determination, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000). These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for the relevant NAICS classification code 333414, “Heating Equipment (except Warm Air Furnaces) Manufacturing,” is 500 employees. To determine whether any manufacturers of natural draft commercial packaged boilers fall below this threshold number, DOE assembled an extensive database of commercial packaged boiler models and manufacturers based on surveys of the AHRI certification directory,<sup>8</sup> the California Energy Commission (CEC) appliance database,<sup>9</sup> and additional industry and manufacturer websites. DOE used this database to identify manufacturers of natural draft commercial packaged boilers for further analysis. Using publically-available data from sources such as Hoover’s online database<sup>10</sup> and manufacturer websites, DOE evaluated each manufacturer to determine if they met the SBA’s definition of a “small business manufacturing facility” and have their manufacturing facilities located within the United States. Based on this analysis, DOE identified seven small businesses that manufacture natural draft commercial packaged boilers.

If adopted, today’s proposed determination would not amend standards and would only reaffirm DOE’s authority to cover natural draft commercial packaged boilers. The proposed

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<sup>8</sup> See Air-Conditioning, Heating, and Refrigeration Institute : Certification Directory (Available at: <http://www.ahridirectory.org/ahridirectory/pages/home.aspx>).

<sup>9</sup> See California Energy Commission: Appliance Database (Available at: <http://www.appliances.energy.ca.gov/>).

<sup>10</sup> See Hoover’s Database (Available at: <http://www.hoovers.com/>).

determination also does not amend any test procedures. Economic impacts on small entities would be considered in the context of such rulemakings.

DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This proposed determination, which proposes to determine that natural draft commercial packaged boilers meet the criteria for classification as covered equipment, will impose no new information or recordkeeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.)

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes to positively determine that natural draft commercial packaged boilers meet the criteria for classification as covered equipment. Environmental impacts would be explored in any future energy conservation standards rulemaking for natural draft commercial packaged boilers. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, codified at 42 U.S.C. 4321 et seq. is not required at this time. NEPA review can only be initiated “as soon as environmental impacts can be meaningfully evaluated.” (10 CFR 1021.213(b)) This proposed determination would only determine that natural draft commercial packaged boilers meet the criteria for classification as covered equipment, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time.

Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### E. Review Under Executive Order 13132

Executive Order (E.O.) 13132, “Federalism,” 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (March 14, 2000). DOE has examined today’s proposed determination and concludes that it would not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today’s proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.



#### F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the duty to: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) the preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

#### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, codified at 2 U.S.C. 1501 et seq.) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any 1 year (adjusted annually

for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy also is available at <http://energy.gov/gc/office-general-counsel>.) DOE reviewed today’s proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so the UMRA requirements do not apply.

#### H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 15, 1988), DOE determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriation Act, 2001 (44 U.S.C. 3516 note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). The OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today’s proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### K. Review Under Executive Order 13211

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of the Office

of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action proposing to determine that natural draft commercial packaged boilers meet the criteria for classification as covered equipment would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of E.O. 12866, and the OIRA Administrator has not designated this proposed determination as a significant energy action under E.O. 12866 or any successor order. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

#### L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute "influential scientific information," which the Bulletin defines as "scientific information the

agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.” 70 FR 2667 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

DOE will determine the appropriate level of review that would be applicable to any future rulemaking to amend energy conservation standards for natural draft commercial packaged boilers.

## **VI. Public Participation**

### **A. Submission of Comments**

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine whether natural draft commercial packaged boilers are covered equipment under EPCA.

Comments, data, and information submitted to DOE’s email address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR Part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two well-

marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

#### B. Issues on Which the Department of Energy Seeks Comments

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments from interested parties on the following issues related to the proposed determination for natural draft commercial packaged boilers:

- Definition of “natural draft commercial packaged boiler”;
- Whether classifying natural draft commercial packaged boilers as covered equipment is necessary to carry out the purposes of Part A-1 of EPCA; and
- Availability or lack of availability of technologies for improving the energy efficiency of natural draft commercial packaged boilers.

DOE invites all interested parties to submit, in writing and by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, comments and information on matters addressed in this notice and on other matters relevant to a determination for natural draft commercial packaged boilers. DOE is also interested in receiving views concerning other issues relevant to amending the test procedure and energy conservation standards for natural draft commercial packaged boilers.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination. If DOE confirms in the final determination that natural draft commercial packaged boilers qualify as covered equipment, DOE may consider amendments to the test procedure and energy conservation standards for natural draft commercial packaged boilers as part of the upcoming rulemaking for commercial packaged boilers generally. Members of the public will be given an opportunity to submit written and oral comments on any proposed amended test procedure and standards.

### **List of Subjects in 10 CFR Part 431**

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

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Energy Efficiency and Renewable Energy

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